

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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**AUG 13 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Petition of WorldCom, Inc. Pursuant )  
to Section 252(e)(5) of the )  
Communications Act for Expedited )  
Preemption of the Jurisdiction of the )  
Virginia State Corporation Commission )  
Regarding Interconnection Disputes )  
with Verizon Virginia Inc., and for )  
Expedited Arbitration )

CC Docket No. 00-218

In the Matter of )  
Petition of Cox Virginia Telecom, Inc. )  
Pursuant to Section 252(e)(5) of the )  
Communications Act for Preemption )  
of the Jurisdiction of the Virginia State )  
Corporation Commission Regarding )  
Interconnection Disputes with Verizon )  
Virginia Inc. and for Arbitration )

CC Docket No. 00-249

In the Matter of )  
Petition of AT&T Communications of )  
Virginia Inc., Pursuant to Section 252(e)(5) )  
of the Communications Act for Preemption )  
of the Jurisdiction of the Virginia )  
Corporation Commission Regarding )  
Interconnection Disputes With Verizon )  
Virginia Inc. )

CC Docket No. 00-251

**VERIZON VIRGINIA INC.'S MOTION TO EXTEND THE TIME  
FOR FILING TESTIMONY AND FOR A PROTECTIVE ORDER**

AT&T and WorldCom have abused the discovery process in this proceeding,  
issuing more than 650 discovery requests (more than 900 counting subparts) to Verizon  
Virginia Inc. ("Verizon VA") — most of them within the past three weeks.  
AT&T/WorldCom's tactics have interfered with Verizon VA's ability to respond to these  
requests in a timely manner and to prepare its case effectively. Moreover, at this point

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the responses to the outstanding discovery questions will not aid AT&T/WorldCom in preparing rebuttal to Verizon VA's cost studies, either because AT&T/WorldCom was late in asking these questions (making them due after August 17) or because the volume of requests has so buried Verizon VA that it is unable to answer fully the questions that are due before August 17.

AT&T/WorldCom already have indicated that they intend to use these responses not in rebuttal testimony — in which they are supposed to provide all criticisms to Verizon's cost studies — but rather in their surrebuttal testimony due September 5. This result is unacceptable. AT&T/WorldCom's surrebuttal is intended to be limited to responding to Verizon VA's rebuttal testimony, not mounting new attacks on Verizon VA's cost studies (which Verizon VA would not have an opportunity to answer in its surrebuttal). AT&T and WorldCom waited three weeks after receiving the cost studies and then bombarded Verizon VA with hundreds of questions. AT&T and WorldCom should not now be permitted to benefit from their own delay in seeking discovery. Verizon VA therefore requests that the Commission extend the current schedule for filing testimony related to cost issues as follows:<sup>1</sup>

Rebuttal cost testimony	August 29
Surrebuttal cost testimony	September 17

Verizon VA is not proposing to change the schedule for filing non-cost testimony or the hearing dates.

Verizon VA further requests that the Commission issue a protective order requiring AT&T and WorldCom to review and reduce their discovery requests. Finally,

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<sup>1</sup> AT&T/WorldCom have informed Verizon VA's counsel that they object to revising the schedule.

Verizon VA requests that the Commission make clear that AT&T/WorldCom are prohibited from including rebuttal material in their surrebuttal testimony.

### **BACKGROUND**

On February 1, 2001, the Common Carrier Bureau released a Public Notice that established the procedures governing these proceedings. *See* Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and WorldCom (“Public Notice”), CC Docket Nos. 00-218, 00-249, 00-251, DA 01-270, Public Notice (rel. February 1, 2001). Among other things, the Public Notice provided that objections to written discovery requests must be filed within three days of service of the discovery requests and that written responses to discovery requests must be served no later than 15 days after service of those requests. In contrast to the Federal Rules of Civil Procedure, the Public Notice did not limit the number of discovery requests that the parties may serve.

On July 2, 2001, Verizon VA filed its cost studies and AT&T and WorldCom jointly filed their cost studies. On July 31, the parties filed their direct written testimony on non-mediation issues, and the parties are currently preparing their rebuttal testimony, which must be filed on August 17.

AT&T and WorldCom to date have served a combined total of more than 650 discovery requests — more than 900 counting subparts. Thus far, AT&T alone has served nine sets of discovery requests, and AT&T and WorldCom jointly have served an additional eight sets of discovery requests. Although Verizon VA filed its cost studies on July 2, AT&T and WorldCom did not serve questions relating to these cost studies until after July 23 – and then filed more than 400 in a two-week period. Because of the timing

of these requests, Verizon VA has had to respond to these requests at the same time it was drafting direct written testimony on cost and non-mediation issues, which was filed on July 31, and preparing rebuttal to AT&T and WorldCom's direct testimony, due August 17.

AT&T/WorldCom, moreover, issued a large number of requests — more than 200 — during the week of August 6. Verizon VA's responses to these questions are not even due until after rebuttal testimony is due to be filed on August 17.

### **ARGUMENT**

AT&T and WorldCom have taken advantage of the Commission's decision not to impose restrictions on the number of discovery requests, burying Verizon VA with more than 650 discovery requests at the same time that Verizon VA is attempting to prepare its testimony. Importantly, although Verizon VA filed its cost models on July 2, AT&T and WorldCom have served more than 400 discovery requests since July 23, most of which relate to these cost studies. For example, AT&T and WorldCom's First Set of Data Requests contains 51 requests all (or almost all) of which relate to the cost studies, but it was not served until July 24. AT&T and WorldCom's Sixth Set of Data Requests contains 136 requests (187 counting subparts), many of which ask for support for the cost studies. It was not served until August 6, 2001, more than one month after the cost studies were filed. Verizon VA's responses to these questions are due after rebuttal testimony is filed in this case.

By waiting three weeks or more to file numerous discovery requests related to the cost studies, AT&T and WorldCom have made it virtually impossible for Verizon VA to respond to these requests within the 15-day response period required by the Commission

and have unfairly forced Verizon VA to devote substantial time and resources to respond to these requests at the same time that Verizon VA is preparing rebuttal testimony. Verizon VA cannot, as a temporary measure, reassign employees to deal with the barrage of discovery requests because the very same witnesses and analysts, whose expertise is necessary to respond to the voluminous discovery requests, are also needed to prepare the testimony in this case. Moreover, these witnesses and analysts are already stretched thin because many of them must also work on discovery requests and testimony in similar proceedings pending in Massachusetts, Maryland, Delaware, and the District of Columbia.<sup>2</sup>

AT&T and WorldCom's failure to serve discovery requests relating to the cost studies until three or more weeks after the cost studies were filed raises substantial questions about the necessity for those requests. For example, responses to AT&T and WorldCom's Sixth Set of Data Requests, which, as noted above, was served on August 6 and contains numerous questions about the cost studies, are not due until August 21, 2001 — after the deadline for filing rebuttal testimony. Even responses to requests served July 24, 2001, were not due until August 8, leaving AT&T and WorldCom only one week to use that information in rebuttal testimony.

Although AT&T/WorldCom have indicated its willingness to allow Verizon VA additional time to respond to discovery requests, they should not be permitted to disadvantage Verizon VA by waiting to introduce rebuttal testimony until the surrebuttal round. AT&T/WorldCom could have sought discovery on the cost studies as soon as

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<sup>2</sup> To the extent that these requests are duplicative of requests that AT&T and/or WorldCom have served in proceedings in other states, Verizon VA requests that AT&T and WorldCom be ordered to identify any requests that were submitted to Verizon elsewhere. While it is possible for Verizon to review all the discovery in other proceedings, that review is itself expensive and time-consuming.

they were filed on July 2, which would have substantially reduced the burden on Verizon VA. AT&T and WorldCom should not be permitted to use their own delay in seeking discovery as an excuse for attacking Verizon VA's cost studies after the rebuttal testimony round in this case. AT&T and WorldCom, moreover, waited to serve their Fifth, Sixth, Seventh, and Eighth Sets of Discovery until August 2 or later; in light of the 15-day period for responses, AT&T and WorldCom would not have been able to use responses to these requests in their rebuttal testimony, which is due on August 17.

### **CONCLUSION**

For the foregoing reasons, the Commission should extend the time for filing rebuttal testimony to August 29, and surrebuttal testimony to September 17. This schedule will permit Verizon VA to finish responding to the voluminous number of discovery requests issued by AT&T/WorldCom<sup>3</sup> and will ensure that AT&T/WorldCom include all their arguments challenging Verizon VA's cost studies in their rebuttal testimony, not in surrebuttal testimony.

The Commission should also require AT&T/WorldCom to review all of their outstanding requests and identify no more than 100 of those requests for Verizon VA to answer. This approach would still allow AT&T and WorldCom to seek discovery about relevant issues in this case, but it would force them to determine which of their hundreds of requests are necessary. Indeed, in federal court, the Federal Rules of Civil Procedure force parties to prioritize their discovery by limiting the number of depositions and interrogatories. *See* Fed.R. Civ. P. 30(a)(2)(A) (limiting parties to 10 depositions); Fed. R. Civ. P. 33(a) (limiting parties to 25 interrogatories, including subparts).

Respectfully submitted,



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Dated: August 13, 2001

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<sup>3</sup> Verizon VA, of course, will continue to object to requests that it believes are irrelevant, overly broad and burdensome. The Commission will have the opportunity to address these specific objections if and when AT&T/WorldCom file a motion to compel.

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing Motion for Protective Order were served electronically and by overnight mail this 13th day of August, 2001, to:

Dorothy Attwood (not served electronically)  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
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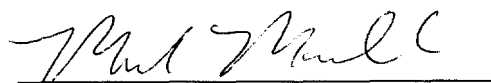
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